

1 because --

2 A. Correct.

3 Q. Okay. Now, are you familiar with the
4 order, the proposed sale order?

5 A. Yes.

6 Q. And is it true that the proposed sale
7 order requires carriers to continue providing
8 services to the purchaser through the cutoff date?

9 A. Correct.

10 Q. And we don't know again how long that
11 could be? It could be -- it could be 35 days, it
12 could be six years, it could never happen if the
13 notices don't go out; correct?

14 A. That's correct. Although there is an
15 obligation on the part of the buyer to decide
16 whether they're going to assume or assign --
17 assume or reject the contract, I believe, within
18 120 days.

19 Q. I didn't ask you that. I'm asking you
20 about just sending out the notice.

21 So we don't know how long the cutoff
22 date is going to be. We don't know what the burn
23 rate is going to be.

24 And you don't know how this

1 purchaser is going to be capitalized; correct?

2 A. I know that as of the closing date, the
3 purchaser will be capitalized with \$30 million.
4 At least thirty, they may put in more.

5 I don't know how they're going to be
6 capitalized in the future. I can't tell you what
7 the burn rate will be six months from now. I
8 can't tell you.

9 I don't know their specific plans
10 with respect to the assets.

11 MR. GWYNNE: Okay. I have no
12 further questions, Your Honor.

13 THE COURT: Anyone else wish to
14 examine the witness in opposition?

15 All right. Mr. Shapiro.

16 MR. SHAPIRO: Your Honor, I just
17 have a few questions for the witness.

18 BY MR. SHAPIRO:

19 Q. Mr. Feuerabendt, are you familiar with
20 the management agreement that was negotiated with
21 IDT last night and this morning?

22 A. Yes.

23 Q. Generally --

24 MR. SHAPIRO: Your Honor, may I

1 approach the witness and give him a copy?

2 THE COURT: Yes, you may. ;

3 BY MR. SHAPIRO:

4 Q. Mr. Feuerabendt, would you read
5 Section 3.1 for me, please?

6 A. Sure. Ongoing operations, Clause A.

7 The buyer hereby agrees to pay in
8 advance on a weekly basis all newly accruing
9 actual costs and expenses of its ongoing
10 operations of the business during the period
11 commencing on the closing date and ending as
12 applicable to the specific customers on the date
13 on which the FCC grants authority to buyer to
14 discontinue service to the customers of the
15 sellers (the last day of such period being the
16 "cutoff date"). Notwithstanding the foregoing,
17 the buyer shall have no rights with regard to the
18 Chapter 11 case or no rights to participate
19 therein except as set forth in the asset purchase
20 agreement.

21 Should I continue?

22 Q. Thank you. You can stop right there for
23 a second.

24 MS. SILVERSTEIN: Does counsel have

1 a copy of that management agreement to share with
2 this table because that is not the management
3 agreement that has been handed out prior to this
4 hearing?

5 MR. SHAPIRO: Well, as I indicated
6 earlier, the FCC and the buyer negotiated some
7 language literally two minutes before we started
8 the hearing. I may have another copy without that
9 language, I'm not sure.

10 This was the only copy that was
11 given to me before I approached the podium. But
12 I'm happy to share with you right now.

13 BY MR. SHAPIRO:

14 Q. Can you read it again?

15 Mr. Feuerabendt, would you like to
16 read that slowly for everyone?

17 A. I would. Section 3.1, Ongoing
18 Operations, Clause A.

19 The buyer hereby agrees to pay in
20 advance on a weekly basis all newly accruing
21 actual costs and expenses of the ongoing
22 operations of the business during the period
23 commencing on the closing date and ending as
24 applicable to specific customers on the date on

1 which the FCC grants authority to buyer to
2 discontinue service to the customers of the
3 sellers (the last day of such period being cutoff
4 date). Notwithstanding the foregoing, the buyer
5 shall have no rights with respect to the
6 Chapter 11 cases or any right to participate
7 therein except as set forth in the asset purchase
8 agreement.

9 Q. Thank you. In your view, does that
10 obligate the buyer to prepay expenses from and
11 after the closing date that accrue after the
12 closing date?

13 A. It -- it certainly does.

14 Q. In your view, does that require the buyer
15 to pay for, for example, carriers including people
16 like Verizon and Williams for the cost and
17 expenses accruing after the closing date so long
18 as such services are being provided?

19 A. Yes.

20 Q. And does that require effectively the
21 service providers taking credit risks, or is there
22 a prepayment involved there?

23 A. If they're prepaying, I don't think
24 there's any credit risk.

1 Q. All right. Can you read Paragraph B of
2 that section, please?

3 A. Sure. Clause B.

4 The Buyer hereby agrees in
5 furtherance in its obligations to ensure that not
6 later than the closing date it will fund an
7 account at Citibank, N.A. (from which during the
8 term funds shall not be withdrawn except to pay
9 amount required to be paid as under Subsection A
10 above) with then the defining the account with at
11 least 30 million in cash.

12 In the event that the Buyer shall
13 fail to pay any such amounts require, I think that
14 should say required, to be paid by the buyer
15 pursuant to this agreement and the seller shall be
16 held liable for such amounts. The Buyer hereby
17 agrees to indemnify seller for any such costs.

18 In the event that any funds shall be
19 on deposit in the account after the Cutoff Date,
20 and all accrued and unpaid costs required to be
21 paid in Subsection A above shall have been paid.
22 Any balance shall, upon five days written notice
23 to the Debtors and the Agent for the Postpetition
24 Lenders, be withdrawn by the Buyer.

1 Q. Thank you.

2 Is it your view that that \$30
3 million that's being put -- that's currently in an
4 escrow in Wilmington, that which will be
5 transferred to Citibank upon closing will be used
6 solely to fund the expenses that you previously
7 described?

8 A. Yes.

9 Q. Is there any reason to believe that that
10 money won't be used for that purpose that you know
11 of?

12 A. No.

13 Q. What is your understanding of where that
14 money came from?

15 A. My understanding is that the \$30 million
16 was -- came from IDT Corporation.

17 Q. And how is that being injected and fused
18 into the acquisition vehicle?

19 A. As equity. As preferred equity.

20 Q. So it's not your understanding that
21 there's any debt component there, this is pure
22 equity as far as you know?

23 A. No, no debt consistent with -- acquirers.

24 Q. And you previously indicated that you've

1 had some dealings with IDT and people who
2 negotiated this transaction; correct?

3 A. I did.

4 Q. And you previously indicated that it was
5 your view that in light of the fact that they were
6 putting \$30 million up in equity to this newly
7 formed vehicle, which would immediately go out to
8 start paying expenses, and there paying \$38
9 million as a purchase price, which would be
10 non-refundable, what was your view of their
11 business acclimate if they did not continue to pay
12 costs on an ongoing basis consistent with that
13 contract?

14 A. That they would lose a lot of money and I
15 think I said didn't think they were the kind of
16 people that like to lose a lot of money or would
17 lose a lot of money. This is a lot of money to
18 put up and have it be irrevocable.

19 Q. A couple of other short questions.

20 Is it your understanding that
21 Verizon is a competitor of Winstar?

22 A. Yes.

23 Q. Is it your belief that Verizon would
24 prefer to see Winstar sold or liquidated?

1 MR. LADDIN: I'm going to object to
2 that, Your Honor. The witness has no personal
3 knowledge.

4 THE COURT: Overruled. You can
5 answer that.

6 MR. LADDIN: Verizon doesn't even
7 know what service.

8 THE WITNESS: I don't know the
9 answer to that question

10 BY MR. SHAPIRO:

11 Q. Okay. What would happen, Mr. Feuerabendt
12 if this sale was not consummated tomorrow?

13 A. I believe the state would have to convert
14 to a seven and customers would have to be
15 terminated immediately.

16 Q. So is it your belief that if we
17 consummate this transaction that people who are
18 continuing to provide service to Winstar will do
19 better or do worse through this transaction?

20 A. If they are paid -- prepaid going
21 forward, I think they're going to be generating
22 business that they otherwise would have not.
23 They're existing exposure to the company would be
24 the same regardless of whether this happened or

1 not. But going forward, they wouldn't have the
2 business that they could generate by staying with
3 the buyer.

4 MR. SHAPIRO: Thank you. I have no
5 further questions, Your Honor.

6 THE COURT: All right.

7 BY MR. TURNER:

8 Q. Mr. Feuerabendt, I understood that --
9 it's Andrew Turner, Williams Communications.

10 I understood that the buyer is going
11 to pay the cost of operation from the time of
12 closing forward; correct?

13 A. Correct.

14 Q. Okay. Under the contracts between the
15 parties, I'll ask you to assume, are you aware
16 whether there are disconnection charges that would
17 be charged to Winstar or Winstar's assignee, the
18 buyer, if they disconnected a particular customer?

19 A. I actually don't know the answer to that
20 question.

21 Q. Assume for me then, if you will, that
22 under the contract with Williams that if Winstar
23 sends us a notice to disconnect Customer A, that
24 Winstar incurs a termination charge. Okay?

1 A. Okay.

2 Q. So assume for me, too, that the closing
3 happens and the buyer decides to terminate
4 Customer A. Will the buyer pay Williams that
5 termination charge?

6 A. Under this contract?

7 Q. Yes, sir.

8 A. I don't know the answer to that question.

9 Q. Okay.

10 A. I believe they will be obligated to do
11 that if they have not rejected the Williams
12 agreement. But I don't know the answer to that
13 question.

14 Q. Well, I note in Paragraph 23 of the
15 proposed sale order and Subparagraph D at the very
16 end of it, the following language occurs: Each
17 service provider shall, upon written notice from
18 the Debtors and the buyer, immediately and without
19 charge or further liability of any kind
20 discontinue and disconnect any such services
21 provided to the Debtors and/or the buyer.

22 So is that changing the contract
23 that Winstar has with Williams with regard to
24 termination charges?

1 A. I don't know what the current agreement
2 is with Williams with respect to termination
3 charges.

4 Q. Assume for me that there are termination
5 charges provided for in the agreement with
6 Williams, then does that provision change that?

7 A. It sounds like it.

8 MR. TURNER: Okay.

9 BY MR. LADDIN:

10 Q. Again, Darryl Laddin on behalf of
11 Verizon. Just a couple more follow-up questions.

12 I just want to clarify with respect
13 to Section 3.1(a) of the management agreement, is
14 it your understanding that if the Debtor is
15 contractually obligated to pay Verizon for
16 whatever charges there are under the contracts
17 that the Debtor and the purchaser will be
18 responsible for all of those charges, whatever
19 they may be under the contracts?

20 A. That's how I would read this, yes.

21 Q. And one final question with respect to
22 Section 3.1(d), in the \$30 million that will be
23 put in escrow, just to clarify, if the purchaser
24 were to continue to operate Winstar for a period

1 of four, five or six months, or longer, that 30
2 million wouldn't be enough to fund the expenses of
3 the company, would it?

4 A. Again, I don't know the specific
5 intention of the buyer with respect to the
6 assets. I don't know what their burn rate is
7 going to be starting the date after the closing.

8 So for me to say that 30 million is
9 not enough for them to last six months, I just
10 don't have that knowledge.

11 MR. LADDIN: I have nothing
12 further.

13 BY MS. SILVERSTEIN:

14 Q. Laurie Silverstein on behalf of certain
15 affiliates of SBC. Following up on Mr. Laddin's
16 question, he asked you if there was a charge where
17 the Debtor was obligated to pay under the contract
18 would it be paid.

19 Let me ask you a slightly different
20 question.

21 If there is a charge under the
22 contract that the Debtor has with one of the
23 carriers is the buyer obligated to pay that charge
24 under the agreement during the period, this

1 transition period?

2 MR. SHAPIRO: Your Honor, I object
3 to that question. Mr. Feuerabendt was put on as
4 an expert with respect to the sale process not
5 with respect to whether or not how the legal
6 interpretation of this contract works.

7 He's not a lawyer and I think that
8 that question is better posed to either the buyer
9 or the lawyers for the Debtor and the Buyer.

10 THE COURT: I'll overrule the
11 objection. You can answer.

12 THE WITNESS: I actually don't know
13 the answer to that question.

14 BY MS. SILVERSTEIN:

15 Q. Let me ask you: On the contract you have
16 in front of you, are there any other handwritten
17 changes to that contract?

18 A. I don't know if this is a change or not,
19 there is some handwritten note here on Section 4.5
20 after the sentence that ends with the definition
21 of transitional period.

22 Q. Yes. Can you read that, please?

23 A. Sure. It says, Buyer agrees to comply
24 with the discontinuance of service notice

1 requirements pursuant to, I think, it's 8214 of
2 the Communications Act.

3 And that's all I see.

4 Q. And just so I'm clear, IDT, the public
5 corporation, which has the \$1 billion in cash, as
6 represented to this Court, is not guaranteeing
7 payment obligations of the buyer of the shell
8 company; correct?

9 A. There is no guarantee that I'm aware,
10 although I believe they were going to deliver a
11 letter today saying that they would backstop the
12 buyers indemnification of sellers obligations for
13 the cost of the ongoing business. I don't know if
14 that actually ended up happening or not.

15 Q. Okay. So to your knowledge at this
16 moment and as reflected in the agreements before
17 the court, there is no such guarantee; correct?

18 A. To my knowledge, sitting here today,
19 that's correct.

20 MS. SILVERSTEIN: Thank you.

21 THE COURT: All right. Thank you.
22 You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Do you have any other

1 witness, Mr. Shapiro?

2 MR. SHAPIRO: No, Your Honor. The
3 Debtor has no other witness.

4 THE COURT: Does any objector wish
5 to call any witness?

6 MS. SILVERSTEIN: Your Honor, could
7 we have a moment?

8 THE COURT: Yes.

9 (Following a discussion held off the
10 record:)

11 MR. TURNER: Andrew Turner,
12 Williams Communications. Is the Debtor resting
13 its case in support of its motion? Is it time for
14 the objectors to call their case?

15 MR. SHAPIRO: What was that? I'm
16 sorry.

17 MR. TURNER: The inquiry was
18 whether the Debtor is resting its case in support
19 of the motion of approval of the sale, is it then
20 time for the objectors to put on our case?

21 We don't want to put on our objector
22 case before we have all the evidence in support of
23 the sale, Your Honor.

24 MR. SHAPIRO: I think the Debtors

1 have put on the Debtors' witness. I think the
2 Buyers reserve the right to put on a witness for
3 the Buyers.

4 I think that we should let the
5 objectors put on their case and let the Buyer, to
6 the extent the Buyer would like to put on any
7 witness that they would like to put on, Your
8 Honor.

9 THE COURT: All right. Mr. Jonas,
10 did you want to, or counsel, put on any witness?

11 MR. ALBALAH: Your Honor, if I
12 could, I would yield to Debtors' counsel approach.
13 It is the Debtors' burden.

14 The Debtor has put on its case. Let
15 the objectors put on their case. If Your Honor
16 would like, we would reserve our right to call
17 witnesses, to the extent it's appropriate, for the
18 Buyer to do so.

19 THE COURT: The procedure I'd like
20 to follow is if the Buyer has a witness, to put
21 them on now, and then we'll see what the objector
22 has.

23 MR. ALBALAH: Your Honor, with
24 respect to --

1 THE COURT: You don't have to call
2 him.

3 MR. ALBALAH: Understood.

4 THE COURT: You can call a witness
5 in rebuttal.

6 MR. JONAS: I'm happy to get to the
7 heart of the thing. Do you want me to be the
8 witness or --

9 THE COURT: You have to be the
10 witness under oath and someone would examine this.

11 MR. ALBALAH: At this point in
12 time --

13 THE COURT: You better talk to your
14 client then.

15 MR. ALBALAH: The witness -- the
16 issue was whether the deal as put forth to the
17 Court is in the best interest to the estate. I
18 believe that from the Buyers' perspective, their
19 case has been put on. To the extent there are any
20 other bids and we have to compare apples to apples
21 and apples to oranges, we reserve all rights to
22 that regard.

23 THE COURT: The Debtor and the
24 Buyer reserve rights to a rebuttal case, so do the

1 objectors have any witnesses?

2 MR. TURNER: Your Honor, I think
3 before the objectors would want to put on any
4 witness, I would like to make a motion for
5 judgment on the Rule 52(c) and ask the Court to
6 deny the motion if that's their case in chief.
7 There's nobody that knows anything about the run
8 rate.

9 They're trying -- they're asking
10 Your Honor to compel us to enter into contracts
11 they don't know the burn rates. They don't know
12 the capitalization of the purchaser.

13 And if that's -- if Your Honor can
14 approve a sale on that record, then Your Honor, I
15 would say there are probably few sales that can't
16 be approved. I don't think the Debtor met its
17 burden in this case in its case in chief.

18 And therefore, I would move for Your
19 Honor to deny the motion based on the Debtor's
20 presentation, which was a witness who I believe
21 didn't really know much of anything.

22 THE COURT: Okay.

23 Mr. Shapiro.

24 MR. SHAPIRO: Your Honor, the

1 Debtors respectfully disagree with Mr. Turner.
2 The Debtors put on a case as to what is in the
3 best interest of the estate, and whether or not
4 this offer constitutes the highest and best offer
5 in accordance with the sale procedures that we
6 have approved by Your Honor a few weeks ago, I
7 believe that Mr. Feuerabendt testified accurately
8 as to the fact that all of the costs will be borne
9 by the buyer, as set forth in Section 3.1, until
10 such time that the FCC says that they don't have
11 to.

12 And therefore, it is irrelevant what
13 the burn rate is because they're picking up all
14 the costs until that time is over. And the only
15 question that I see that is legitimate here is
16 what would happen if and when \$30 million ever ran
17 out, and maybe that's a question that we can get
18 the Buyers to answer so that we clear this record,
19 and so that everyone gets comfortable since
20 everyone is being promised that they will be
21 prepared on a weekly basis by the Buyer.

22 MR. TURNER: Your Honor, I think
23 the Feuerabendt testimony of what was going to be
24 done was simply reading from the agreement, but

1 there has to be -- you have to be able to back it
2 up. It's not just about what's in the best
3 interest for the estate, meaning the lenders, the
4 utilities, and the landlord, and the creditors,
5 and the administrative claimants. They're part of
6 the estate, too.

7 And there's a bunch of people
8 telling you it's not in the best interest of the
9 estate as far as their constituencies are
10 concerned. He didn't know anything about the
11 purchaser, anything about the purchasers
12 capitalization, didn't know when the money would
13 run out, didn't know what the historical burn rate
14 was, couldn't say and said he's not saying
15 anything about the accuracy of the burn rate.

16 They're asking Your Honor to compel
17 us to enter the contracts. Aside from the legal
18 issues violating 356 to forget cure and compel us
19 to enter into new contracts with an entity, that
20 there's no evidence could even comply, assuming
21 that it was even legally something that the Court
22 could do.

23 The Buyer has been obligated to pay
24 cures not -- Your Honor, under these -- under this

1 management agreement and this order, we have to
2 enter into new contracts with them, no cure,
3 nothing. And we're enjoined from terminating,
4 even though he testified that they're supposed to
5 prepay us, if we don't prepay, we can't terminate.

6 THE COURT: Well, I'm not talking
7 about the prepayment or the going forward
8 obligations. I'm talking about the --

9 MR. TURNER: If the buyer assumes a
10 contract, Your Honor, the agreement provides sure
11 they'll pay that as an assumed liability, but the
12 way they've teed it up and Buyer's counsel has
13 already told us he's not intending to assume more
14 contracts nor should he because they're compelling
15 us to provide services going forward without a
16 cure.

17 THE COURT: So what you understand
18 the document to say is that if there is an
19 assumption that cure will be met by this trial,
20 which is what?

21 MR. TURNER: But there's nothing in
22 the order. The purchaser would probably be
23 ridiculous to assume the contracts because they
24 have provisions ordering us to enter into the new

1 contracts with them and not allowing us to charge
2 them for the arrearages because there's no
3 assumption.

4 THE COURT: You're mixing a lot of
5 issues going back and forth. I'm trying to
6 address your issue, as I read the agreement, they
7 are obligated to pay cure.

8 MR. TURNER: That is right.
9 Illusory what the contract says, utilities, you
10 have to enter into contracts with us. Not we have
11 to agree to an assumption, we have to enter into
12 new contracts with them.

13 And I don't think --

14 THE COURT: Is that the Debtors'
15 understanding of the document?

16 MR. SHAPIRO: Again, let me outline
17 again so that everyone is clear. The documents
18 provide that there is 128-day period in which the
19 Buyer has a right to choose whether it assumes or
20 rejects the contracts.

21 THE COURT: The same time it seeks
22 the necessary approval of --

23 MR. SHAPIRO: Correct. Well, while
24 it is assuming FCC and FCC regular remember by its

1 way its buyer has given out any out here is if
2 they pay the purchase right up front and they
3 don't get those regulatory approvals, they end up
4 owning the assets and this deal has been done.
5 There's no recourse back to the purchase price.

6 That is an aside. In the event they
7 didn't assume a contract, obviously, they don't
8 won't way a cure in the eight him. They are
9 required to pay a cure and put assurance of future
10 performance at a hearing before Your Honor in
11 order to allow for a hearing of the cure.

12 Now, what Mr. Gwynne is referring to
13 is the fact that the Buyer has the right as they
14 have under applicable law today to applicable
15 tariffs to seek out new contracts which they have
16 the right to do as any other carrier would have
17 the right to do from each of these carriers that
18 are required by law to provide this tariff.

19 And the only thing that the order
20 would do is in the event that they end up entering
21 into a new contract with the buyer, with let's
22 take, WorldCom.

23 THE COURT: Mr. Gwynne, is that the
24 order mandating that the --

1 MR. SHAPIRO: There's no
2 obligation, nothing that allows them outside the
3 law to enter those contracts outside of tariffs.
4 What it requires is that Mr. Gwynne's client
5 cannot interfere with its services, cannot exact
6 nonrecurring charges for merely, you know, letting
7 the customers continue under a brand new contract
8 that IDT has negotiated.

9 That is all this order does.

10 MR. ALBALAH: There is no need for
11 anyone to get excited. I think there was a slight
12 misstatement unintentionally.

13 The language of the proposed order
14 does say that the carrier has to "enter into
15 comparable common carrier service agreements".

16 That's on Page 18, Paragraph 20.
17 Those who are requested by the Debtor of the buyer
18 to enter into comparable common carrier service
19 agreements to permit the Debtors to permit the
20 buyer to provision the same service are directed
21 to cooperate in a commercially reasonable manner
22 with the buyer to establish such service
23 agreements and arrangement.

24 MR. GWYNNE: It's not just saying

1 we have to negotiate.

2 First of all, Your Honor, I mean
3 does the Court have authority to compel us to
4 negotiate an agreement? Where is that in
5 Section 365.

6 THE COURT: I don't think the
7 agreement says that, and I don't think I would
8 have the authority to do that.

9 But the way I review it, I don't
10 think it's a mandate, so I'm in a different
11 place. And as I understand it the buyer doesn't
12 believe that.

13 MR. ALBALAH: The buyer does not --
14 I misspoke before and I apologize for that. The
15 Debtor is -- at the end of the sentence, simply
16 that the carriers have to cooperate in a
17 commercially reasonable manner, but substantively
18 I do believe the order does in effect continue
19 Your Honor's order, which requires the carriers to
20 provide services going forward provided that Buyer
21 pays in advance.

22 THE COURT: I understand that part,
23 but that's a different issue, again, than what
24 Mr. Gwynne is talking about. The order that I

1 would enter if I approve this sale would require
2 these carriers to continue to provide the service,
3 but for new service contracts there's no mandate
4 by my order that they have to enter into one.

5 MR. ALBALAH: First, that is
6 consistent with the Buyers' understanding.

7 MR. GWYNNE: Your Honor, that's
8 changed in the 24 hours, so I am glad to hear
9 that.

10 But with respect to the management
11 agreement and the continuation of services and all
12 ordering us to continue to do that, that's a
13 separate issue. And I guess if we get into
14 objections in the legal arguments, I'll address
15 that.

16 But, I mean, based on the testimony
17 that was presented, I would ask Your Honor how can
18 you make a finding as to this purchaser's ability
19 to comply with the agreement? How can you make a
20 finding as to this purchaser's ability to pay the
21 carriers' charges going forward beyond the couple
22 months.

23 THE COURT: Well, all of that would
24 go to the weight of the testimony. They've put on

1 their case.

2 And at this juncture, there's been
3 no opposite case put on. So I would deny the
4 application saying that it goes to weight.

5 And then I'll judge the Blackstone
6 opinion with any other evidence that contributes.

7 MR. GWYNNE: Thank you.

8 MR. GARBER: Good afternoon, Your
9 Honor. Aaron Garber for Cisco System Capital
10 Investment. Our issue is with respect to the
11 procedures that are happening today are slightly
12 different.

13 THE COURT: Well, hold on. Before
14 we get to that, we have to have a procedure here.
15 The point we're at now is does anyone in
16 opposition to the sale motion have a witness that
17 they want to put on?

18 MR. GARBER: We don't, Your Honor.

19 THE COURT: Okay.

20 MR. TURNER: Andrew Turner,
21 Williams Communications. We call
22 Mr. Gary Morgan.

23 THE COURT: Could I ask you to swear
24 in the witness?

1 THE COURT: Could I ask you to
2 swear in the witness?

3 THE REPORTER: Yes.

4 GARY MORGAN,
5 the deponent herein, having first
6 been duly sworn on oath, was
7 examined and testified as follows:

8 BY MR. TURNER;.

9 Q. Would you state your full name for the
10 record and tell us whether you're employed and in
11 what capacity?

12 A. Yes. My name is Gary Morgan,
13 M-O-R-G-A-N. I am with Williams Communications
14 Group. I'm the director of finance and
15 administration with oversight for credit
16 responsibilities.

17 Q. Okay. In that position are you familiar
18 with the Williams' account for Winstar
19 Communications?

20 A. Yes, sir, I am.

21 Q. Can you tell me: Are you familiar with
22 what's happened with that contract during the
23 bankruptcy case?

24 A. Yes, sir, I am.

1 Q. Tell us about what transpired in August
2 of this year with respect to that account.

3 A. We operate under an interim agreement
4 that we negotiated with Winstar during the
5 Chapter 11 as a post-petition provider of service
6 and within that agreement, obviously, we expected
7 to be paid. That was approved by the Court.

8 And it allowed us a five-day
9 termination notice if we weren't being paid for
10 services.

11 Q. Okay.

12 A. During the course of the summer, we were
13 not being paid for services. The customer was in
14 default. We made every effort to work with them
15 to get the account brought current.

16 We're \$21 million in arrears now, so
17 I think that shows you our commitment to try to
18 make this work and work with them. But they
19 continued to default.

20 Under obligations they would not pay
21 us and it forced us in November to send a
22 termination notice to terminate services for
23 nonpayment.

24 Q. Okay. That interim agreement, was that

1 the subject of the Court's ruling approving that
2 agreement on August 27th?

3 A. That is correct.

4 Q. What kind of services does Williams
5 provide to Winstar?

6 A. Basically advice and data service.

7 Q. Are the services that Williams provides
8 Winstar wholesale?

9 A. Yes.

10 Q. Are those services themselves subject, to
11 your understanding, to the federal, you know,
12 Communications Act?

13 A. Not to my understanding.

14 Q. Now, what was the payment arrangement?
15 Has Winstar made all the payments due Williams in
16 September 2001?

17 A. No, sir, they have not.

18 Q. Does Winstar owe any money for October
19 2001?

20 A. Yes, sir, they do.

21 Q. And how much?

22 A. The aggregate is about -- for September,
23 October is about 3.9, and we have a burn rate of a
24 little over a million a week.

1 So we have November and December
2 billing, so approximately, seven million for what
3 we call off-net services. And then,
4 approximately, 14 million for on-net services.

5 Q. And under the interim agreement, on-net
6 services were accrued and added to the DIP money;
7 right?

8 A. That is correct, sir.

9 Q. So you were only being paid for off-net
10 service?

11 A. That is correct.

12 Q. Tell the Court what is an off-net service
13 as opposed to an on-net service?

14 A. Well, that's basically where the service
15 is not provided on our network, so therefore we
16 have to engage other carriers and other service
17 providers to provide that service. On our behalf
18 an it becomes a pass through billing type is he.

19 Q. Has Williams paid the other carriers or
20 is it obligated to pay the other carriers for
21 those off-net services?

22 A. To my knowledge.

23 Q. So the \$3.9 million that's due for
24 October, is that for on or off-net service?

1 A. That is for off-net service.

2 Q. And Williams is obligated in turn to pay
3 that \$3.9 million to other carriers?

4 A. That is correct. It's out-of-pocket
5 service.

6 Q. What is the off-net bill, approximately,
7 for November?

8 A. Well, the actual bill has not been sent
9 there, but with our burn rates, I can estimate
10 that it will be, you know, approximately a little
11 over 2.1 million.

12 Q. On-net service, those are services
13 provided directly by Williams?

14 A. That's correct.

15 Q. What's the on-net amount owed by Winstar
16 to Williams for November?

17 A. For November, again, I am estimating it
18 was -- through October it was 10.4 million. And
19 then beyond that service, again, for November,
20 since I haven't actually been billed is, roughly,
21 an estimate, it's about 600, 630,000 a week.

22 Q. Per week?

23 A. Yes.

24 Q. Now, those are based on the Debtors'

1 actual run rates during the course of this
2 Chapter 11?

3 A. That is correct.

4 Q. You've got information available to you
5 that indicates that?

6 A. That's correct.

7 Q. So for off-net services, for last week,
8 let's say, --

9 A. Mm-hmm.

10 Q. -- what does Winstar now owe the Debtor,
11 Winstar, now owe Williams?

12 A. Roughly about 21 million.

13 Q. Sorry?

14 A. Roughly, 21 million.

15 Q. Just for last week's service only?

16 A. Last week, probably about 1.2, 1.1, 1.2.

17 Q. Million dollars?

18 A. Yes, sir.

19 Q. Have you been contacted by any
20 representative of the IDT or the proposed special
21 purpose vehicle they're going to form to purchase
22 this entity?

23 A. No, I have not.

24 Q. Has anyone made an indication to you as

1 to when you can expect to receive any kind of
2 payment in advance or prepayment for services?

3 A. No, sir, they have not.

4 Q. So if a deal closes tomorrow and you're
5 supposed to be prepaid, when are you looking for a
6 check?

7 A. I would hope tomorrow. I hoped before.

8 Q. Do you have any idea how much they're
9 going to pay you tomorrow --

10 A. I am sorry. I do not.

11 Q. -- if the sale closes?

12 MR. TURNER: That's all I've got of
13 Mr. Morgan.

14 THE COURT: Let's see if any of the
15 other objectors wish to examine this witness.?

16 All right. Mr. Shapiro.

17 MR. SHAPIRO: I just have a few
18 questions, Your Honor.

19 BY MR. SHAPIRO:

20 Q. The on-net services that you spoke of,
21 can you explain to the Court how those are treated
22 under the documentation?

23 A. Under the interim agreement?

24 Q. Under any of the documentation that

1 you've entered into with Winstar.

2 A. Yes, sir. We are providing those on-net
3 services and they are what we categorize as a
4 deferred AR, which becomes a part of the DIP.

5 Q. So those are being -- I don't want to put
6 words in your mouth -- those are being put into
7 the DIP loan and accrued in accordance with the
8 documentation for the DIP loans; correct?

9 A. That's correct.

10 Q. So you are paripisu with all the DIP
11 lenders at this point with respect to anything
12 that you've accrued with respect to those
13 services; is that your understanding?

14 A. On the on net, yes, sir.

15 Q. On the on net?

16 A. That's correct.

17 Q. And is it your belief that the DIP
18 lenders will do better through a sale or worse
19 through a sale, or better through a liquidation?

20 A. I don't think I have enough information
21 to determine that.

22 Q. Okay. That's fair.

23 With respect to your \$7 million of
24 off-net services, what kind of claim is that?

1 A. It's a minimisu (phonetic).

2 Q. And based on the values that you've been
3 hearing about with respect to this case, which I
4 know are obviously not nearly as high as people
5 would like, what do you expect the treatment of
6 that claim to be in a liquidation hearing?

7 A. Again, I don't think I have enough
8 information to make that --

9 Q. Well, generally.

10 A. -- observation.

11 Q. What would you think it would likely be?

12 A. I would think it would be pretty poor.

13 Q. And is it your understanding that the
14 buyers are proposing to prepay weekly for the
15 services that you would be asked to provide?

16 A. I have seen no documentation of such, but
17 that is my understanding from just what I've
18 overheard today.

19 Q. Assuming that what you overheard today
20 was in a contract signed by the buyer by
21 Mr. Feuerabendt, and assuming that contract is
22 signed on the closing date, is that type of
23 prepayment arrangement something that your company
24 has done in the past with either Winstar or other

1 carriers?

2 A. With other carriers, correct.

3 Q. So that's not something that's unusual in
4 this circumstance, so it would be fairly regular
5 to ask someone who you might not have gotten
6 credit approval to prepay for services?

7 A. That's correct, sir.

8 MR. SHAPIRO: That's all I have,
9 Your Honor.

10 THE COURT: Any other questions?
11 Counsel for the buyer?

12 MR. ALBALAH: Not at this time,
13 Your Honor.

14 THE COURT: Let me ask you a
15 question so I understand. Before Winstar filed
16 for bankruptcy, you had a contract with them?

17 THE WITNESS: That's correct, sir.

18 THE COURT: And how long had that
19 contract been existing?

20 THE WITNESS: I don't recall the
21 actual date when we signed our initial contract
22 with them. Some were in the neighborhood of a
23 couple of years, I believe two or three years.

24 THE COURT: And when they filed

1 their petition, were you owed any money?

2 THE WITNESS: Yes, sir, we were.

3 THE COURT: How much were you
4 owed?

5 THE WITNESS: The last claim I
6 remember was in the tune of around 28 million
7 bucks, 28 million.

8 THE COURT: And you haven't gotten
9 any of that?

10 THE WITNESS: No, sir, we haven't.

11 THE COURT: And then they came in
12 to Chapter 11 and you agreed with them to provide
13 new service under a stipulation?

14 THE WITNESS: That's correct.
15 Under an interim agreement.

16 THE COURT: And what was your
17 understanding of how that worked?

18 THE WITNESS: That we would --
19 obviously, to continue to provide the services
20 that they needed to continue the operation. We
21 wanted to try and help and be a DIP lender, not a
22 DIP lender, I'm sorry, correct that. To provide
23 services for them.

24 We did that under the stipulation

1 that we would be paid. But if we were not,
2 assuming this kind of situation would occur, that
3 they -- we would be allowed to terminate within
4 five days. That was our protection.

5 And the fact that we aren't being
6 allowed to terminate is what's creating financial
7 hardship to us, sir.

8 THE COURT: Now; did you get any
9 money under that stipulation?

10 THE WITNESS: Yes. Under the
11 interim agreement, we did get some payments, yes,
12 sir.

13 THE COURT: Do you know how much
14 that was?

15 THE WITNESS: No, I do not, not in
16 aggregate.

17 THE COURT: But since you entered
18 into that stipulation and your motivation was you
19 thought, what, that it was -- what was your
20 motivation under the stipulation?

21 THE WITNESS: That we wanted to
22 be -- that we would continue to be a service
23 provider and help Winstar through their
24 difficulties. And again, we assumed that payment

1 would be made and they would have the opportunity
2 to terminate the arrangement if they did not.

3 THE COURT: And since then, you
4 lost \$21 million?

5 THE WITNESS: 21 million is our
6 overall aggregate exposure. 14 is -- roughly 14
7 would be in the on-net deferral amount that
8 Mr. Shapiro referred to and would be paripisu with
9 the DIP lenders.

10 Around seven million right now is
11 the amount that we are owed under the interim
12 agreement that we have paid out-of-pocket costs
13 for.

14 THE COURT: Could you repeat that
15 because I want to make sure I understand it. You
16 entered into the stipulation?

17 THE WITNESS: Mm-hmm.

18 THE COURT: And you started
19 charging Winstar?

20 THE WITNESS: Mm-hmm.

21 THE COURT: And how much did you --
22 let's just make it simple.

23 THE WITNESS: Again, sir, I don't
24 know the aggregate amount that has been billed.

1 All I can tell you today is I could provide that,
2 but I don't have that today. But what is due and
3 owing from the amounts billed, I can tell you
4 today, and that's seven million of the off-net
5 services that were provided by another carrier,
6 which under the agreement they would agree to
7 pay.

8 So we would not be out of pocket out
9 any cost. It was a pass-through-type cost
10 situation.

11 THE COURT: So the seven million is
12 what you're out of pocket that you have to pay
13 other people?

14 THE WITNESS: That's correct.

15 THE COURT: And is that part of the
16 21 million?

17 THE WITNESS: That's correct, sir.

18 THE COURT: So that leaves 14
19 million you were talking about?

20 THE WITNESS: 21 as the on-net
21 amount, correct.

22 THE COURT: Now, if you were
23 permitted to shut the service down to Winstar
24 today, your actual loss would be \$7 million?

1 THE WITNESS: Yes, sir. That's the
2 exposure.

3 THE COURT: Now, when you were
4 billing Winstar, was there any profit in what you
5 billed them?

6 THE WITNESS: I don't -- I don't
7 see all the margins on specific sales, so I
8 wouldn't know all the margins. Some of the costs
9 were passed through I know with some of the off
10 net for each of the particular contracts and
11 agreement that we -- and price, I'm not aware of
12 what the margins would be.

13 THE COURT: Well, you know, I
14 understand, but is there any profit in there?

15 THE WITNESS: I don't know if I
16 could answer that honestly today, sir.

17 THE COURT: You don't know if your
18 business makes any profit?

19 THE WITNESS: Well, the
20 arrangements to pass through some of the off-net
21 costs, I believe that was just a straight pass
22 through. Obviously, on the on net is where --

23 THE COURT: Right. That's the part
24 I was wondering about.

1 THE WITNESS: Yes, sir. Yes, sir.

2 THE COURT: Is there any profit,
3 that part?

4 THE WITNESS: Yes, sir. I would
5 think so, yes.

6 THE COURT: What would be the
7 margins typically in your industry that you would
8 look for?

9 THE WITNESS: Well, it varies all
10 over the board because if they're volume
11 purchasers, it could very -- it could be very
12 incremental. And if it's not, it could be much
13 higher.

14 And I just don't think I could
15 speculate today.

16 THE COURT: I don't have any idea.
17 I'm trying to get an idea.

18 Is it like two bedrooms or is it
19 like percent, or is it like -- I had a case of
20 compact discs, they make 75 percent?

21 THE WITNESS: No, nothing like
22 that.

23 THE COURT: Well, I know.

24 THE WITNESS: I wish.

1 THE COURT: I'm trying to find out
2 where that range is.

3 THE WITNESS: I think in this
4 business -- I think in this business right now the
5 margins are fairly slim, so I, again --

6 THE COURT: So it's, like, less
7 than double digits?

8 THE WITNESS: I would assume so,
9 but I couldn't go on record as saying that's the
10 case. I'm just not familiar with our margin side.

11 THE COURT: If you had a profit and
12 you stayed in business with them, and you went
13 forward, would that part of that profit help cut
14 your losses?

15 THE WITNESS: Well, obviously,
16 yes. If it was a relationship where we were being
17 paid, yes, sir.

18 THE COURT: But you don't have any
19 idea what that ratio is that helps you out to get
20 back some of this money and what time it would
21 take?

22 THE WITNESS: Yes, I could -- I
23 could not tell you that. Obviously, getting paid
24 is paramount to us because what the financial

1 hardship of not being paid has created for us.

2 So I think the concern is if we're
3 not going to be paid, we just absolutely need to
4 stop the bleeding. That term stop the bleeding,
5 to not go further in the hole than 21 million that
6 we're already down.

7 THE COURT: If you were getting
8 paid going forward, and you could cut the service
9 in two to five days that wouldn't be such a bad
10 situation would it?

11 THE WITNESS: If we were guaranteed
12 a payment and guaranteed that we could cut
13 service.

14 THE COURT: That would be --

15 THE WITNESS: Because one of the --

16 THE COURT: That would be okay?
17 Well, I mean, the main thing is getting payment.
18 Then if you don't get it, being able to cut
19 service?

20 THE WITNESS: Absolutely.

21 THE COURT: Now, when you entered
22 into the last agreement, that didn't happen.
23 There's a lot of people in this bankruptcy that
24 aren't going to get paid just like you, but going

1 forward, getting the money and being able to cut
2 services is what's important to you?

3 THE WITNESS: Absolutely. And
4 knowing that there's going to be money there and
5 because, basically, if we end up in this position
6 if I don't get paid, what's my recourse back
7 against the IDT shell company to ensure that I get
8 paid. That's what I would look at, how am I going
9 to get my money if they call me and say you're not
10 getting paid today.

11 THE COURT: Now, if the buyer here
12 was supposed to pay at the beginning of the week,
13 and you didn't get that check, and you could shut
14 the service off in 48 hours, would that be a kind
15 of an arrangement that would be okay?

16 THE WITNESS: The only issue, I
17 guess, that would be there, and I'm not an expert
18 in regulatory issues, would we be able to cut off
19 that service. That need seems to be one of the
20 issues that's on.

21 THE COURT: Right. That would be
22 30 days?

23 THE WITNESS: Right.

24 THE COURT: But if the court would

1 let you cut it off in a couple of days, that would
2 be okay?

3 THE WITNESS: Yes. If I could
4 limit my exposure to two days, that would be very
5 attractive, yes.

6 THE COURT: Okay. Anyone else have
7 any questions?

8 MR. KAROTKIN: Stephen Karotkin
9 from Weil, Gotshal & Manges for the DIP lenders.
10 BY MR. KAROTKIN:

11 Q. I believe you indicated that Williams has
12 provided -- currently provides both on-net service
13 and off-net service to Winstar?

14 A. That is correct, sir.

15 Q. And in connection with -- let's focus on
16 the on-net service?

17 A. Yes, sir.

18 Q. Do you know the cost of Williams to
19 providing on-net services?

20 A. No, sir, I do not.

21 Q. Do you know if there's over capacity?

22 A. Well, we have a 33,000 mile lit network,
23 so we have capacity. Yes, sir.

24 Q. So if you didn't sell it to Winstar, it

1 wouldn't be utilized; correct?

2 A. Yes. I would assume that's correct.

3 MR. KAROTKIN: No further
4 questions.

5 THE COURT: Any other what we could
6 characterize as cross-examination? Then we will
7 go to redirect.

8 BY MR. TURNER:

9 Q. Now, you're obligated to provide certain
10 specific fibers to Winstar in case they want to
11 send capacity over that, aren't you?

12 A. Yes, that's correct.

13 Q. Could you tell us on every route, do you
14 have excess capacity on every route?

15 A. No, sir, I can't.

16 Q. Are there some routes where you're at
17 capacity?

18 A. It's a possibility. I wouldn't have
19 knowledge.

20 Q. You're not the capacity load guy?

21 A. I'm not the capacity guy.

22 Q. Do you know whether the FCC has contacted
23 any of your officers at Williams Communications to
24 indicate that you were not allowed to cut off on

1 your five-day notice that you were provided under
2 this Court's order of August 22nd?

3 A. Yes, sir, they have.

4 Q. Who did they contact?

5 A. They contacted our outside counsel,
6 yourself, sir, and also Bob McCoy, our in-house
7 general counsel.

8 Q. Okay. Is Mr. McCoy a senior officer of
9 the company?

10 A. Yes, sir, he is, as of November 21st.

11 Q. So do you have any fear if you were about
12 to go forward with the arrangement proposed here,
13 if you had the opportunity to terminate based on
14 nonpayment, do you know whether, in fact, you --
15 the government would sit idly by and let you
16 terminate, or would you expect, based on the past
17 history, that they'd come in and say you have to
18 provide service for yet another 21 days or even
19 longer?

20 A. Based on what was learned to us, the
21 latter.

22 THE COURT: The FCC has been around
23 this case a little while. What was that message
24 they gave to your senior people? How much time